THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20520 OF 2005

DATED:19.9.2005

Between:

M/s.Indocean Engineers Pvt. Ltd.

A registered company under the Indian Companies Act, 1956

Having its registered office at Flat No.401,

'Regency House' 6-3-680, Greenlands Road

Somajiguda, Hyderabad, rep. by its

Managing Director, Nanik J. Bhagia

…Petitioner

And

The Municipal Corporation of Hyderabad,

Rep. by its Commissioner, having its office

At M.C.H. Complex, Tank Bund, Hyderabad

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20520 OF 2005

ORDER:

The petitioner is owner of flat No.401, 4th floor, in Municipal No.6-3-680/1 situated at Punjagutta. The respondent sent a communication on 26.7.2005 asking the petitioner to give consent for surrendering an extent of 88.42 Sq.mts as per the plan for widening the road from Somajiguda Circle to Punjagutta. The petitioner states that he is not willing to give his consent and that any action on the part of MCH without due process of law under the Land Acquisition Act, 1894 would be illegal.

Municipal Corporation of Hyderabad (MCH) sought consent of the owner for advance possession in larger public interest. It does not, however, mean that in the event of owner of the property not willing to give consent the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act). In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

Learned Standing Counsel for MCH has placed before this Court a note file in File No.616/ACP/C5/MCH/2005 wherein the orders were passed to the effect that if the land owner is not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). Therefore, the Writ Petition is misconceived. If the petitioner is not given his consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property of the petitioner. In this case, the petitioner has allegedly not given his willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioner cannot be deprived of his right to enjoy the property.

The Writ Petition with the above observations is accordingly disposed of. No costs.

(V.V.S.RAO, J)

19.9.2005

bnr